DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF

November 30, 2012

Programs and Project Management Division

Ms. Amy Legare
National Remedy Review Board Chair
1200 Pennsylvania Avenue, NW, MC5204P
Washington, DC 20460

Dear Ms. Legare:

The U.S. Army Corps of Engineers, New York District (USACE) welcomes the opportunity to provide comments to the U. S. Environmental Protection Agency (USEPA) National Remedy Review Board on Region 2's Preferred Alternative for the Lower Passaic River Focused Feasibility Study (FFS). The District has been a partner with USEPA and the State of New Jersey (New Jersey Department of Transportation [NJDOT] and New Jersey Department of Environmental Protection [NJDEP]) since 2003 to develop a comprehensive solution for the remediation and restoration of the Lower Passaic River pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Water Resource Development Act (WRDA) authorities.

I want to express my sincere appreciation to the USEPA for this valued partnership; we look forward to continuing to work together to restore the Passaic River and its valuable economic and natural resources. The partners and communities within the region are depending on the advancement and successful implementation of the remediation of the Lower Passaic River. The implementation of a timely, technically sound remedy is critical for the region and its stakeholders to:

- Protect the health of human and ecological communities in the region;
- Stop the migration of contaminants downstream from the Lower Passaic River into the NY/NJ Harbor Estuary that will continue to impact the navigation and restoration programs throughout the Harbor estuary;
- Protect the $1.4 billion taxpayer investment in the 50-ft NY/NJ Harbor Deepening Project that will be completed by 2014. The Port of NY/NJ is a major economic engine in the NY/NJ Metropolitan Region that serves 35% of the US population, provides 280,000 jobs and annually is responsible for approximately $54 billion in personal/business income and local tax revenue;
- Restore the existing federal navigation channel in the Passaic River that will allow local businesses to regain/maintain economic viability;
- Improve water and sediment quality to return the river to a fishable and swimmable condition; and
- Implement ecosystem restoration in the Lower Passaic River and other parts of the estuary as outlined in the draft Hudson Raritan Estuary Comprehensive Restoration Plan

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that represents the consensus views of the key stakeholders for restoration within the Hudson Raritan Estuary.

USACE understands that USEPA's Preferred Alternative in the FFS is Alternative 3, Capping with Dredging for Flooding and Navigation, with Dredged Material Management (DMM) Scenario B, Off-Site Disposal. Under this alternative, 4.3 million cubic yards (CY) of contaminated sediments will be dredged from the river and disposed off-site, and 5.3 million CY of contaminated sediments will remain in the riverbed beneath an engineered cap. We have some technical concerns with the long-term efficacy of an engineered cap over seven miles of a dynamic tidal river such as the Lower Passaic. Any capping remedy must be constructed to ensure sequestration of all material from erosion during storm events, river flows, ice flows, propeller wash, wave heights, etc., to ensure no contaminant migration from below the cap. The concerns are highlighted by the impacts from storm surge as were seen recently during Hurricane Sandy. With over 400 acres of river bottom proposed to be capped, it is critical that protocols and strict enforcement measures be implemented to ensure that the cap is frequently monitored and then maintained, as necessary, in perpetuity.

The preferred alternative also provides for the use of the authorized federal navigation channel in the lower 2.2 miles to accommodate current and potential projected future commercial use. The District will continue to assist the USEPA in the process that will be needed prior to any recommendation for modification (between RMs 1.2 and 2.2) and de-authorization (above RM 2.2) of the currently authorized federal navigation channel within the project area.

The USACE recognizes the challenges in selecting an appropriate Dredged Material Management (DMM) option for the large quantities of sediments removed from the river. All DMM options (Contained Aquatic Disposal [CAD] Cells, Decontamination technologies and Off-Site Disposal) have significant challenges for implementation. Ideally, the USACE would prefer an expedited action that removes all 9.6 million CY of contaminated sediments and utilizes decontamination technologies to deliver a product that can be beneficially reused. The District supports USEPA's willingness to modify the Record of Decision (ROD) if decontamination technologies come to fruition. There has been significant investment of more than $40 million over the last twenty years to advance decontamination technologies between USEPA, NJDOT and the USACE, as well as the implementation of decontamination pilots as part of the Lower Passaic River Remedial Investigation/Feasibility Study (RI/FS). The District will continue to support the advancement of decontamination technologies as a solution for managing contaminated sediments throughout the region. We recognize however, given the high cost, extended construction duration, and uncertainties related to treatment and off-site disposal for Alternative 2 (removal of 9.6 million CY of sediment), this alternative could encounter significant challenges that could hamper, delay, or prevent implementation of the critically needed remediation of the Passaic River.

The Passaic River merits and desperately needs a timely and thorough cleanup that will allow the entire NY/NJ Harbor Estuary to improve and function at a higher ecological and economic level. We believe work needs to begin on the eight miles as soon as possible so we can start to see the benefits of a cleaner river and estuary in the near-term. We ask that careful consideration be given to identify a remedial approach that is cost-effective and technically sound and that will be implementable in the near-term.

While the USACE acknowledges the concerns of some partner agencies and non-governmental organizations, we believe that the construction and operation of CAD cells in the vicinity of Newark Bay are a viable and technically proven DMM option that would be capable of achieving the goals stated earlier, if other options do not come to fruition. The USACE understands that EPA did not select a CAD cell alternative since it was considered to be "administratively infeasible" and unsupported by the State of New Jersey and environmental organizations, even when the technology has already been successfully proven in Newark Bay (see enclosure: Castagna, 2012, http://www.asce.org/copri/News/Headlines/2012/Port-s-dredged-materials-management-method-keeps-economy-afloat/) as well as many other areas including Boston Harbor, New Bedford Harbor, Providence River, Puget Sound, St. Louis River, Los Angeles, Netherlands, Hong Kong, Puerto Rico, Brazil and Belgium.

Reasons we believe a CAD option should not be dismissed include:

- CAD cells are proven disposal sites that can be constructed and utilized with only localized short-term impacts;
- CAD cells are a DMM Option with the least impacts to the surrounding communities;
- CAD cells have been implemented successfully all over the country including a local success illustrated by the construction, utilization and recent capping of the Newark Bay Confined Disposal Facility (NBCDF) in Newark Bay (Note: documents including NBCDF Environmental Impact Statement and water quality monitoring reports are available to aid in the evaluation of this DMM Option);
- CAD cells located in Newark Bay present a unique opportunity due to the ideal natural presence of a thick impermeable red-clay shelf over bedrock in a Bay with a well established, already impacted, depositional environment (i.e., very low potential for erosion due to storm events) ensuring the secured and consolidated disposal of contaminated sediment in the long-term;

- CAD cells are cost-effective and only half the price ($916 million) as compared to Off-Site Disposal ($1.716 billion) and Decontamination Technologies ($1.750 billion) for the removal and disposal of 4.3 million CY of sediment;
- CAD cells are easily sized and economical (only $1.4 billion) to accommodate the larger volume of contaminated sediment if decisions were made to dredge the entire 9.6 million CY of existing contaminated sediments in the river; and
- CAD cells can be a source of clean sediment that could be beneficially used to cap the Lower Passaic River, abandoned landfills adjacent Newark Bay, and contaminated mudflats recently identified in Newark Bay, as well as create and restore habitat throughout the region to maximize benefits.

The Corps of Engineers will continue as a project partner and provide technical support to assist the USEPA in planning and implementing a remedial action on the Lower Passaic River. The remediation must be accomplished as soon as possible to not only protect human health and the environment, but to protect the significant financial investments in deepening the navigation channels within the NY/NJ Harbor, as well as ensure that future restoration plans and priorities can be advanced within the Lower Passaic River and the Harbor Estuary. Please feel free to contact our Project Manager, Ms. Lisa Baron at 917-790-8306 if you have any questions.

Sincerely,

Paul E. Owen
Colonel, Corps of Engineers
District Commander

Enclosure